IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7747 OF 2005

Ashit Vinod Shah ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Curush Bilmoria for the Applicant
Mr.S.S.Pednekar,A.P.P. for State.

CORAM: ABHAY S.OKA,J.
DATE : DECEMBER 23,2005

P.C.:

1. This is the second bail application made by the Applicant. Earlier bail application made by the Applicant was rejected by this Court by order dated 25th August 2005.

2. The Advocate for the Applicant has placed reliance on order dated 16th November 2005 passed by this Court in Criminal Application No.6990 of 2005 and pointed out that this Court has granted bail in favour of the co-accused in the same case. He submitted that the Applicant is entitled to claim parity on the basis of the said order. He submitted that the said order dated 16th November 2005 is a substantial change in circumstances which warrants reconsideration of earlier view taken by this court in the first bail application of the Applicant.

3. The learned A.P.P. did not seriously dispute that the Applicant can claim parity on the basis of order dated 16th November 2005. He, however, submitted that there is no change in fact situation as contemplated by the decision of the Apex

Court in the Judgment reported in (2005) 2 S.C.C. page 42 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan). He invited my attention to paragraph No.20 of the said decision.

4. I have considered the submissions. In case of Kalyan Chandra Sarkar (supra) the Apex Court has held thus :

"....Therefore, even though there is room for filing a subsequent bail application in cases where earlier applications have been rejected, the same can be done if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete..."

5. As indicated earlier, it is not seriously disputed that the Applicant can claim parity on the basis of the order dated 16th November 2005. The said order is passed in favour of the co-accused who is also a Director of the same company. This Court while granting bail in favour of the said co-accused by order dated 16th November 2005 has observed thus :

"....Further by virtue of the order passed under section 102 of the Code of Criminal Procedure,1973, all accounts have been freezed. Thus, there is attachment and documents have been seized. Considering the fact that the shares are of the listed company and records are available at the

> Stock Exchange, there is no question of any further interrogation. Accused No.2 having been enlarged on bail and the applicant is an executive director and a senior citizen ought to be treated similarly..."

6. Thus, it is apparent that the co-accused was granted bail not only on the ground that he was a senior citizen but also on consideration of aforesaid factors. Investigation has been completed long back. From what is observed by this Court above, it is crystal clear that now there is no scope for the Applicant to tamper with evidence. The Applicant is in custody from May 2005.

7. As of today, there is a material change in fact situation in the sense that after this Court rejected the first bail application filed by the Applicant, a co-accused has been granted bail by this Court by a subsequent order and in fact the Applicant is entitled to claim parity on the basis of the said order passed in favour of the co-accused.

8. Thus, in my view, there is a change in fact situation which requires earlier view being interfered with. Hence, the Applicant is entitled to be enlarged on bail on the same conditions on which the co-accused was ordered to be enlarged by order dated 16th November 2005.

9. Hence I pass the following order :

i) The applicant is enlarged on bail on furnishing security in the sum of Rs.1,00,000/- with one or more sureties in the like amount.

ii) The applicant shall surrender his passport to the appropriate Court before being released.

iii) The applicant shall abide by all the conditions as are imposed by the trial Court on accused No.2.

iv) The bail is granted subject to the condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witness and shall not in any manner tamper with prosecution evidence.

v) The applicant shall cooperate with the learned trial Judge for expeditious disposal of the trial.

vi) Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii)The application is disposed of in the above terms.

ix) The parties to act upon an authenticated copy of this order.

(ABHAY S. OKA, J.)